

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --)
Streamlining of Radio Technical Rules in)
Parts 73 and 74 of the Commission's Rules)

MM Docket No. 98-93

COMMENTS

Tuned In Broadcasting, Inc. ("Tuned In"), the licensee of WRLT(FM), Franklin, Tennessee and three other Class A FM stations,^{1/} hereby submits its comments in the above-referenced proceeding. As set forth herein, Tuned In supports the Commission's proposals for negotiated interference and related items proposed in the Notice of Proposed Rulemaking (the "Notice"), and suggests additional changes to the provisions of Section 73.213 of the rules. The adoption of such proposals will allow low power Class A FM stations, such as those owned by Tuned In, which operate in major broadcast markets and compete against high power Class C facilities, to better their signal so as to more effectively become full competitors in their markets.

Background

1. Tuned In believes that its station WRLT is one which demonstrates the crying need for the Commission to adopt rules and regulations allowing for negotiated interference, and for allowing FM stations to modify their facilities by agreeing to accept interference as long as the station does not create any new shortspacings or any interference to any other station. WRLT

^{1/} WRLG, Smyrna, Tennessee; WYYB, Dickson, Tennessee and WDBL, Springfield, Tennessee.

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is a Class A FM station licensed to Franklin, Tennessee, a community which is a close-in suburb of Nashville. While at one time Franklin may have been an independent community removed from Nashville, with the advent of suburban sprawl over the last forty years, the economic life of Franklin has become intertwined with that of the greater Nashville area. Two of the other Tuned In stations are also licensed to communities within the Nashville Metropolitan Statistical Area.

2. Each of Tuned In's stations are Class A facilities. The truth of the radio marketplace is that each of these stations have service areas encompassed by the signals of Nashville area Class C FM stations. The Tuned In stations have to compete against these high powered stations with their full coverage of the entire metropolitan area not only for listeners and the advertising dollar, but also for employees. Obviously, given the larger reach and more significant power of the Class C stations, these stations can afford programming and staffs far easier than can a smaller, locally owned station such as WRLT.

3. To make matters worse for Tuned In, WRLT is a grandfathered short-spaced station governed by the provisions of Section 73.213 of the Commission's Rules, limited to an effective radiated power of 3 kilowatts. WRLT commenced broadcasting in 1963, prior to the adoption of the current FM Table of Allotments. It has always been shortspaced to two other FM stations, both of which are Class C facilities. Because of these shortspacings, even an increase to the new Class A power limit of 6 kilowatts has been precluded without the consent of at least one of these stations, consent which it has thus far been unable to obtain.

4. WRLT could upgrade to a 6 kilowatt Class A station at its present tower site without increasing the shortspacings to any station or creating any interference to any other station. However, if it were to request such an upgrade, it would be precluded by existing Commission rules because WRLT would receive interference in a small area of its increased

service area -- an area which does not even currently receive any service from the station. Thus, while WRLT could increase its service area and serve a substantial number of new listeners, allowing it to compete more effectively with the high powered Nashville stations without creating any interference to any other station, it is precluded from doing so because of this predicted interference received within the expanded service area by listeners who do not even receive the signal of the station at the current time. It simply defies rational explanation how this policy serves the public interest, as it protects people who do not need any protection. Because of situations such as this one, the Commission is justified in amending its rules to provide more flexibility for stations seeking to improve their facilities.

Discussion

Receive Only Interference

5. The Commission's proposal in the Notice, at paragraph 22, begins to address the current dilemma faced by WRLT. However, it does not go nearly far enough to resolve the issue. Paragraph 22 implies that if a "new shortspacing" were created, an applicant must first receive consent of the station to which that shortspacing would be created. The proposal then in effect penalizes the affected station for giving its consent, by downgrading them to a Section 73.215 station, subject to encroachment on their protected service areas. One of the principal contexts in which this issue will arise is in connection with increases in the facilities of grandfathered shortspaced stations, such as WRLT, subject to the provisions of Section 73.213. In the context of stations subject to Section 73.213, this need for consent and the classification of the consenting station as a Section 73.215 station simply does not make sense, especially when the only effect of the applicant's increase in power is the creation of receive-only interference to the applicant's own station, without causing any interference to the "affected" station. The

Commission should amend the provisions of Section 73.213 to provide that an increase in power of a Class A station subject to the provisions of Section 73.213 would be permitted if such an increase would not cause interference to any other station, and would not create any shortspacing to any new station. In that way, a station such as WRLT could increase its power to the full 6 kilowatts permitted by the rules, greatly benefitting its competitive posture, without causing any interference to any other station or otherwise affecting the integrity of the Commission's FM rules.

6. This change could be adopted regardless of whether the Commission makes any of the other changes proposed in its Notice as, with respect to Section 73.213 stations, the impact on the stations themselves is great, while the impact on the vast majority of all stations regulated by the Commission is small. In other words, these stations have already been shortspaced, and the FM allotment scheme has never really applied to them, as they existed before this scheme was adopted. While some parties to this proceeding may seek to protect the integrity of the FM allotment scheme in the context of existing fully spaced stations, as that scheme has never really applied to the grandfathered shortspaced stations, those arguments should not be a bar to the proposal made herein. Thus, making the minor changes proposed by Tuned In will not compromise this licensing scheme. For the reasons specified above, Tuned In respectfully requests that the changes proposed herein be adopted.

Section 73.213 Upgrades

7. In the context of the streamlining of the Commission's technical rules and the procedures outlined in the Notice for facilities improvements, Tuned In hereby suggests that the Commission go one step further in the actions previously taken in the Report and Order in MM Docket No. 96-120, Grandfathered Short-Spaced FM Stations, 12 FCC Rcd 11840 (1997).

Currently, the one step upgrade procedure allowing an FM station to increase its facilities to a higher class of operation can be undertaken only if the stations are fully spaced, or if there is at least a hypothetical site at which the station would be fully spaced and the applicant utilizes the provisions of Section 73.215 of the rules.^{2/} The one-step upgrade provision does not apply to stations already shortspaced under Section 73.213 of the rules, stations which are often in the most need of an expeditious upgrade because of their coverage is already limited by their short spacings to other stations.

8. Tuned In hereby suggests that the Commission allow the one-step upgrade procedure to cover the upgrading of Section 73.213 stations, as long as such stations do not increase interference toward any co-channel or first adjacent channel station, and as long as the proposal does not create any new shortspacings to stations to which the applicant is not already shortspaced.^{3/} If these stations do not create any new interference toward cochannel or first adjacent channel stations, and can otherwise meet all required spacings to all stations to which they are currently fully spaced, they should be allowed to upgrade using the one-step process, thereby expeditiously increasing their service to the public. Tuned In respectfully requests that this additional change be made.

Other Provisions

9. Tuned In generally supports the Commission's ideas on negotiated interference and the elimination of the contingent application rule. These rule changes will allow many smaller stations to increase their facilities so as to compete in their real economic markets.

^{2/} See, Amendment to the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order, 8 FCC Rcd 4735 (1993).

^{3/} Grandfathered Short-Spaced FM Stations, at paragraph 29, eliminated the need for consideration of second and third adjacent channel stations.

Particularly benefitted will be Class A stations such as those owned by Tuned In, stations which have to compete against much more powerful facilities for advertisers, audience and staff. Any power increase, no matter how seemingly minimal, may give such stations the ability to survive in the competitive broadcast world.

Conclusion

For the reasons set forth above, Tuned In respectfully requests that its proposals be adopted.

Respectfully submitted,

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